

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA)
)
 v.) Criminal No. 1:13cr146
)
 YOUSEF AL-KHATTAB)
)

**DEFENDANT’S POSITION WITH
RESPECT TO SENTENCING**

Defendant, by and through counsel, in accordance with 18 U.S.C. § 3553(a) and Section 6A1.2 of the Sentencing Guidelines and Policy Statements submits this memorandum regarding the sentencing factors.

Advisory Sentencing Guidelines.

Mr. Al-Khattab objects to the application of § 2A6.2(b)(1)(D) increasing the guidelines 2 levels for “a pattern of activity involving stalking, threatening, harassing, or assaulting the same victim.” There was no “same victim” targeted by Mr. Al-Khattab. Section 2A6.2 is an enhancement based on 18 U.S.C. §§ 2261-2262 which targets the stalking of a spouse or other individual. Counsel has been unable to find any cases which support a § 2A6.2(b)(1)(D) enhancement for anything other than an individual as the victim. The cases all have a specific individual who was been targeted by the defendant.

The presentence report states that there were “no identifiable victims or restitution issues” and that Chabad, a Hasidic Jewish organization, and other Jewish organizations were the victims and that its members were put into fear. The appropriate guideline for this is a 3 level enhancement pursuant to § 3A1.1(a), hate crimes targeting a specific group which the probation

office gave to Mr. Al-Khattab.

Reducing the guidelines by 2 levels results in a reduction from level 20/I to level 18/I, 27-33 months.

18 U.S.C. § 3553(A) Sentencing Factors.

1. A. Nature and circumstances of the offense.

Revolution Muslim was begun by Mr. Al-Khattab to raise the conscience of Americans to the plight of the Muslims through provoking and inciting thought and debate on various other internet platforms. Mr. Al-Khattab thought that he was legally exercising his First Amendment rights and thought that his rhetoric fell under the protection of the First Amendment. What Mr. Al-Khattab said and wrote was controversial and provoked response. While his commentary was offensive, abusive, vulgar and insulting, it was his aim to initiate dialogue based on his beliefs. Unfortunately, he crossed the First Amendment line of protected speech with some of his rhetoric. Mr. Al-Khattab's dialog was in response to the conflict occurring in the Gaza and other events adversely affecting Muslims such as a pro-Israeli rallies calling for eradication of Muslims and Muslim children (See Attachment 1). Mr. Al-Khattab took to the internet and expressed his views in a similar fashion. His words are subject to interpretation and could be viewed as calling for non-violent confrontation or for violent confrontation. Mr. Al-Khattab did not tell Muslims to go kill the Jewish leaders but he applauded killings non-Muslims by fanatic Muslims. He told Muslims to confront the leaders. Mr. Al-Khattab told the people to find out who the leaders of the United Jewish Federation were in their communities and to confront the leaders. While he said to do that in a civil and peaceful way and that Muslims had a right to assemble and had freedom of speech, because Mr. Al-Khattab is regarded as a radical militant, it is inferred that he

was telling them was confront and attack the Jewish leaders even though he was telling Muslims to exercise their First Amendment right to speech and assembly. His statements and commentary was in his blogs and on internet sites in the public domain and available to anyone to view.¹

The result is that Mr. Al-Khattab is now distrusted by both Jews and Muslims alike. The Jewish people believe that he was a Jew who turned his back on his Jewish faith and became a militant radical Muslim who wants to kill Jews and Israelis. The Muslim people believe that he is a Jewish spy who was using anti-Israeli rhetoric as a cover to infiltrate and spy on Muslim groups.

In fact, Mr. Al-Khattab is a talker and a debater who wanted people to go out and use the strength of their voices to raise the conscience of Americans, Jew and Muslim alike. In this context it is easy to see that Mr. Al-Khattab, as a socially active Muslim, began the website Revolution Muslim which he regarded as his First Amendment right to express his views just as the anti-Muslim groups expressed theirs.

The government's assertion that the postings on the Revolution Muslim website was the impetuous for the various individuals to commit terrorist related offenses is an supposition and not based on any fact. These individuals would have committed their offenses if they had never seen or heard of the Revolution Muslim website. They did not receive any direction from the website or Mr. Al-Khattab. People voluntarily went to the websites or blogs to view Mr. Al-

¹ Interestingly, the district court in *United States v. Cassidy*, 814 F. Supp.2d 574 (D. Md 2011) found that the provisions of the federal stalking statute, 18 U.S.C. § 2261A were unconstitutional as applied to Cassidy and his blogs and twitters which contained threats to the victim were not sent to the victim but posted on the blog site or on twitter.

Khattab's words.²

Mr. Al-Khattab wants to put the Revolution Muslim website behind him and move on with his life. Mr. Al-Khattab voluntarily returned to the United States from Morocco which has no extradition treaty with the United States to address this matter.

Anti-Muslim Hate Groups in New York City.

The Southern Poverty Law Center has a list of hate groups in the United States and lists eight anti-Muslim groups in New York City, all of whom call for the extermination of Islam and all Muslims throughout the world. New York City has more anti-Muslim groups than any other city in the nation and nearly as many as the state of California which has nine anti-Muslim groups. These New York City anti-Muslim groups openly advocate the total extermination of Muslims and the Islamic religion worldwide. (Attachment 1 is list of the groups and some of their website rhetoric.)

Under the government's theory, all those anti-Muslim websites in New York City calling for the extermination of all Muslims would be equally liable for the actions of those who read their website and then commit an anti-Muslim hate crimes or assault Muslims. That is not correct. The website is not liable for the crimes committed by others just because they have read

² Anti-Muslim hate posters were placed on the public transportation systems in New York, San Francisco and Washington, DC by Stop the Islamization of America and unlike blogs and web postings these anti-Muslim posters were specifically targeting the unsuspecting public with their rhetoric. These anti-Muslim posters were intentionally placed in public transportation areas of these major cities to catch the attention of as much of the general public as possible and to create widespread alarm about the purported threat from Islam and Muslims. These hate posters have been found by the courts to be protected by the First Amendment.

the website or blog.

Muslims today live in constant fear of reprisal by ignorant Americans who equate Muslims and Islam with terrorism. On July 23, 2012, Rush Limbaugh on his nationwide radio show stated we distinguish “Muslim terrorists from other Muslims. In a more sensible time, we did not say ‘German Nazis’—we said ‘Germans’ or ‘Nazis’ and put the burden on non-Nazi Germans, rather than ourselves, to separate themselves from the aggressors.” Thus, Limbaugh equated Muslims with Nazis and gave legitimacy to those “Americans” who view all Muslims as terrorists unless they are able to separate themselves from terrorism. Muslims unable to give the correct response may face beatings or death. Even today, more than ten years after the tragic events of 9/11, Muslims continue to be persecuted. The New York Times³ and The Guardian⁴ reported that anti-Muslim hate crimes were increasing in London, not decreasing. It is reasonable to believe that the statistics for the United States would also show an increase.

B. Defendant’s background.

As the presentence report indicates Mr. Al-Khattab converted to Islam from the Jewish faith and continues to practice Islam today. He wife and children reside in Morocco because she has not been able to obtain a visa to travel to the United States. Mr. Al-Khattab works and lives frugally and his parents assist in supporting him financially. He has no criminal record and does not drink alcohol or use drugs.

2. **The sentence will adequately and reasonably reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense. The sentence will afford adequate deterrence to criminal conduct and will adequately**

³ New York Times, February 14, 2014, page A11.

⁴ The Guardian, December 26, 2013.

and reasonably protect the public from further crimes of the defendant.

A variance below the guideline range will reasonably reflect the seriousness of the offense and provide a just punishment and reflect the seriousness of the offense. Mr. Al-Khattab has no prior record and has been cooperative in this matter. Upon being contacted by counsel, he voluntarily returned from Morocco which has no extradition treaty with the United States to resolve this matter. A short term of incarceration will afford a more than adequate deterrence to any future criminal conduct by Mr. Al-Khattab who thought that he was legally exercising his First Amendment rights. Mr. Al-Khattab's actions do not appear to be any worse than those of the anti-Muslim groups in New York who have not been prosecuted.

3. The sentence is necessary to provide the defendant with needed educational training, medical care, and other correctional treatment in the most effective manner.

Mr. Al-Khattab is not in need of medical care and treatment. He may decide to take advantage of educational training.

4. Types of sentences available.

The guidelines calculated by the probation office call for a term of incarceration between 33-41 months. The guidelines without the pattern of activity enhancement calls for a term of incarceration of 27-22 months. There is no mandatory minimum term of incarceration. Court may sentence Mr. Al-Khattab to any term it wishes. Mr. Al-Khattab asks for a term of incarceration of 12 months and one day.

5. Whether the sentence will create an unwarranted disparity between the defendant and others with similar records who have been found guilty of similar conduct.

Jesse Morton was involved with Revolution Muslim and Zachary Chesser was a

contributor. Both were sentenced to significant terms of incarceration, Morton 138 months and Chesser 300 months for behavior that went far beyond speech and toward active involvement in violence. Mr. Al-Khattab should receive a significantly lower sentence than either of these individuals.

Fine, Restitution.

Mr. Al-Khattab can not afford to pay a fine, costs of incarceration, supervised release or probation.

Sentencing Position.

Mr. Al-Khattab asks the court to sentence him to a term of incarceration of 12 months and one day and permit him to self surrender when instructed by the Bureau of Prisons.

Respectfully submitted,

Yousef Al-Khattab
By Counsel

/s/

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CERTIFICATE OF SERVICE

I certify that on the 22nd day of April 2014, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Gordon D. Kromberg, Esquire
U.S. Attorney's Office
2100 Jamieson Avenue
Alexandria, VA 22314

A copy of the foregoing will be emailed to

Karen Riffle
U.S. Probation Office
401 Courthouse Square
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/s/

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